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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. BRANDON IVAN COLBERT, JR., Defendant and Appellant.	B288531 (Los Angeles County Super. Ct. No. NA105286)

APPEAL from a judgment of the Superior Court of Los Angeles County, Jesse I. Rodriguez, Judge. Affirmed and remanded.

Kathy R. Moreno, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Amanda V. Lopez and Nima Razfar, Deputy Attorneys General, for Plaintiff and Respondent.

Based on what is fairly described as overwhelming evidence of guilt, a jury convicted defendant and appellant Brandon Colbert, Jr. (defendant) of murdering Carina M. (Carina) and her four-year-old daughter J.A.; the jury also convicted defendant of attempting to murder J.A.'s father Luis A. (Luis), who was with his family when defendant killed them. The trial court permitted defendant, who suffered from mental health problems, to represent himself at trial—relying on expert evidence and legal precedent to conclude defendant's invocation of his self-representation right must be respected. We consider whether the trial court should have exercised its discretion to terminate defendant's self-represented status. We additionally discuss defendant's claim (not preserved by contemporaneous objection) that the trial court wrongly permitted testifying detectives to narrate video surveillance footage depicting the crimes, as well as two additional sentencing-related claims defendant raises.

I. BACKGROUND

A. The Offense Conduct

After a shopping trip, Luis, Carina, and J.A. returned to their home in Long Beach in the evening on August 6, 2016. Luis parked some distance away and began removing items from the car while Carina and J.A. began walking toward the residence. A man later identified as defendant was waiting on a nearby street corner and, without provocation, fired shotgun blasts at Carina and her young daughter. Witnessing the shooting, Luis screamed and tried to rush toward defendant, who then trained the gun on him and fired again. The shot missed Luis, hitting his car instead, and defendant fled the scene.

Carina's chest was "blown out" by the shotgun blast and she was not talking or breathing by the time Luis reached her. The blast that hit J.A. nearly severed her arm completely and opened a hole in her rib cage, but her eyes were open and she was breathing shallowly when Luis reached her. Luis sat on the ground and tried to comfort J.A. until the paramedics arrived. She was taken to the hospital, where she later died from the gunshot wounds (a round, or part of one, went through her arm and her chest, piercing part of her right lung, liver, and right kidney).

B. Police Investigation

Detectives obtained footage from approximately 20 video surveillance systems (comprising roughly 30 different camera angles) in the area near the murders. The videos showed a man walking down Long Beach Boulevard pulling a roller suitcase and wearing a shirt with white printing on the back. At approximately 8:20 p.m. on the night in question, the man walks into a nearby parking lot, still pulling the suitcase. He leaves the suitcase near a stairway, disappears from view for about 20 minutes, and later comes back in to view walking with an odd gait, seeming to keep one leg straight while the other moves normally.[1] The video footage shows the man put the suitcase in a trashcan and eventually began walking in the direction of where the shooting would subsequently occur.

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[1] There was testimony at trial that the gait was consistent with having hidden a shotgun in his pant leg. There was also testimony the man put on a black shirt or sweater while he was in the parking lot.

Two cameras captured video of the shooting itself. The footage shows the man (whose face is not visible because the cameras are too far away, but who is identifiable as defendant in subsequent footage from other cameras) walk down Locust Avenue and stop behind a sign on a street corner. Two people, later identified as Carina and J.A., cross the street toward the same corner where defendant is standing. Defendant quickly approaches the victims holding something, and clearly visible are three flashes consistent with the flash from a muzzle of a gun. After the first flash the taller of the two people (Carina) falls to the ground. A second flash, aimed lower, follows immediately and the shorter person (J.A.) falls. There is then a third flash as another figure (Luis) runs into the frame, and defendant flees after that flash.

Surveillance footage from other cameras in the area show defendant, identifiable largely due to the same odd gait, progressing down Long Beach Boulevard after the shooting, moving in the direction of where he left his suitcase. Defendant takes off the black shirt or sweater he was wearing, puts on a lighter colored sweatshirt, and manipulates and removes his suitcase from the trash can. Defendant then walks away, pulling the suitcase behind him.

Tracking defendant's movements from footage from other cameras, defendant (identifiable by his suitcase, now with an item protruding from it, and light gray sweatshirt) walks along nearby streets and eventually arrives at a USA Gas Station. Video footage from this gas station is sufficiently close and clear to reveal a face that resembles defendant's face. While at the gas

station, defendant purchases a beverage from the cashier and departs.[2]

Next, camera footage from a nearby Metro station platform depicts defendant, with his suitcase, waiting for a Metro train shortly before midnight. He is no longer wearing the sweatshirt, and the design on his t-shirt—including the number "99" on the back—is visible and consistent with the design seen on a shirt that defendant can be seen wearing in earlier segments of the video footage.

The day after the murders, Jonathan Trivas parked his black Land Rover near where he worked in Santa Monica. The next morning, his car was gone. Trivas reviewed security footage and saw an individual (subsequently identified as defendant) enter his car and drive away.

About a week later, someone entered Trivas's business during a staff meeting and asked if anyone had seen a bag. Everyone answered in the negative, and then one of Trivas's employees recognized Trivas's Land Rover in a nearby alleyway. The staff meeting group assumed the person who asked about the bag had stolen Trivas's car and someone called the police. Trivas later identified defendant as the person who had come into the business asking about a bag, noting he was "maybe 80, 90% sure it was him."

Three weeks after that, a Los Angeles Police Department officer responded to a call regarding a suspicious man sitting in a black Land Rover in a strip mall parking lot. Learning the vehicle had been reported stolen, the officer ordered the man in

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[2] The audio of his interaction with the cashier was included in one version of the video presented at trial.

the driver's seat—defendant—out of the vehicle and took him into custody.

In the meantime, a forensic specialist had swabbed four expended 12-gauge shotgun shells and one damaged live shell found at the scene of Carina and J.A.'s murders for DNA. Pursuant to a warrant, a detective for the Long Beach Police Department obtained a DNA sample from defendant. A criminalist with the Los Angeles County Sheriff's Department compared defendant's DNA to the DNA found on one of the shotgun shells and found the two samples were a probabilistic match (meaning the probability of a random match other than defendant was one in 11 quintillion). A police detective also secured a warrant to seize property taken from defendant upon his arrest, and a dark t-shirt with the number "99" on the back in white ink (resembling the t-shirt visible in the video footage) was among the items.

The police investigation further established defendant had arrived in Long Beach only just before the murders and attempted murder. The police discovered a "B. Colbert" had purchased a ticket for a Greyhound bus leaving Tulsa, Oklahoma at 3:15 a.m. on August 3, 2016, for Los Angeles, California. A Los Angeles Police Department detective who worked with the FBI's Cellular Analysis Survey Team obtained location information records for defendant's cell phone that revealed his phone registered in the Tulsa, Oklahoma area on August 2,[3] in Texas

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[3] Four police detectives traveled to Oklahoma and searched the home where defendant was living. In defendant's bedroom, the detectives discovered an operator's manual for a Savage Arms Model 320 shotgun, as well as a handgun and ammunition.

and New Mexico on August 3, in Arizona on August 4, and in Los Angeles that same day. On the day of the shooting (August 6), defendant (as indicated by the phone location data) traveled from Downtown Los Angeles to the Long Beach area and was in the vicinity of the crime scene around the time of the killings.[4]

C. The Criminal Case

The Los Angeles County District Attorney charged defendant with two counts of murder (Carina and J.A.) and one count of attempted murder (Luis). The murder charges were accompanied by special circumstance allegations under Penal Code[5] section 190.2, subdivisions (a)(3) (commission of multiple murders) and (a)(15) (lying in wait) that made defendant eligible for the death penalty. Accompanying all the charges were allegations that defendant personally and intentionally discharged a firearm causing great bodily injury and death, within the meaning of section 12022.53, subdivision (d).

Detectives also found a sheet of plywood in the backyard that appeared to have been used for shotgun target practice.

[4] Cell phone records further established defendant was in Santa Monica from at least 8:30 a.m. until 3:30 p.m. on August 7—the day Trivas's car was stolen.

[5] Undesignated statutory references that follow are to the Penal Code.

1. The pertinent pre-trial proceedings concerning self-representation

At defendant's initial arraignment on the charged crimes in January 2017, the attorney his family had retained to represent him informed the trial court that defendant wanted to represent himself. Defendant's retained attorney told the court that while he did not believe defendant "is incompetent in the legal sense," he believed defendant is not "competent to represent himself legally in a death penalty case" and advised defendant against it.

Saying "first things first," the trial court informed defendant that before he would be permitted to represent himself the court would "have to be convinced that [defendant] is able to represent himself" and aware of "the charges against him and all the consequences of representing himself." To that end, the court told defendant he would be required to complete a written *Faretta*[6] advisement form. The court advised defendant to "read the form and understand it, and if you don't understand anything, we'll discuss it." Defendant completed the form and told the court he "read it and . . . underst[ood] everything completely well."

The arraignment judge then engaged in an extensive colloquy with defendant concerning his age (22); the extent of his legal education (a year in community college); his familiarity with the law ("I've read books, legal books, and things, but not schooling"); his understanding of his constitutional rights in a criminal case, which defendant repeatedly confirmed he understood; and the dangers of self-representation, including the tasks he would have to perform without the assistance of an

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[6] *Faretta v. California* (1975) 422 U.S. 806 (*Faretta*).

attorney and the difficulty of preparing for trial in custody.[7] The judge further informed defendant of the judge's own "recommendation that you do not act as your own attorney." The court additionally invited comments on the record from the retained attorney then representing defendant, who stated the following: "I don't believe that he's capable of defending himself. I understand the court's in a tough position. [Defendant], he's educated, he's articulate. He doesn't have a clue of what he's getting himself into . . . . [Defendant] is not possibly ready to defend himself, but unfortunately I do not believe that he is—if I had any chance of declaring a doubt [as to his mental competency], I would declare a doubt just to prevent him from doing this, and I've spoken with [the prosecutor] about this, and I believe he is legally competent for whatever it's worth, but he is not capable of representing himself. Particularly not in this murder case."

After the various admonitions and remarks advising against self-representation, the court asked defendant whether he still wished to represent himself. Defendant said he did, explaining: "I understand all things that is against me as far as having the jury, and the judge with the D.A. arguing for my life, with my life in their hands. So that is why it's important that I represent and defend myself." The arraignment judge then asked

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[7] Defendant did not simply give rote "yes" replies to all of the court's questions during the colloquy. When asked if he was "familiar with Los Angeles Superior Court Rule 8.42, which explains the rules that defendants who act as their own attorney at the Los Angeles County Jail must follow," defendant said he was not, adding, "I've been looking and trying to research that." (The court gave defendant a copy of the rule.)

defendant if he was "confident and comfortable to represent [himself]" and defendant replied, "Yes, I am very much." The court then granted defendant's request to invoke his right to represent himself.

Defendant represented himself at the preliminary hearing held just over two months after arraignment. At the outset, standby counsel that had been appointed for defendant told the court she thought "this should be a 1368 referral" (meaning counsel thought the court should evaluate defendant's mental competency) based on what she had read in the discovery provided by the prosecution and her conversations with defendant's family. The prosecutor responded that the opinions of defendant's family members were irrelevant and further noted defendant had been found competent by a court in a separate criminal case just days before the charges were filed in this case. The judge presiding at the preliminary hearing agreed it would "put no stock" in the "hearsay" reported by standby counsel and asked defendant if he was competent to proceed. Defendant responded, "definitely," and the judge replied, "You strike me as such." The court then proceeded with the hearing, defendant cross-examined most of the witnesses called (for instance, asking Luis a question to confirm he did not get a good look at the shooter), defendant testified himself (asserting, among other things, that he pawned his shotgun prior to taking the bus to California and that the person depicted in the video was not him because "the septum of the nose, it's not consistent with mine"), and the court ultimately held defendant to answer.

The following month (April 2017), the prosecution filed a motion asking the trial court to evaluate and determine defendant's competence to represent himself at trial. The motion

noted other courts had struggled when dealing with so-called "'grey-area defendants,'" i.e., those who are competent to stand trial but not necessarily competent to represent themselves, and asked the court to make a factual finding that defendant was competent to represent himself—after further inquiry and a hearing if necessary. The motion made clear "the People are not representing that [defendant] is not competent to represent himself," but were raising the issue to ensure a fair trial and "eliminat[e] any potential appellate issue on this topic."

The trial court addressed the prosecutor's motion and other issues at a hearing later in April. Defendant asserted he could "defend [himself] in a rational manner" and claimed he had spoken to "a couple of psychiatrists" (including Dr. Phani Tumu, the psychiatrist who evaluated defendant's competence in the separate criminal case) while in custody—which defendant thought was "not even necessary."[8] Defendant further claimed the case against him was "fraudulent and a setup" and complained the criminal case was preventing him from getting to "more important things [he] could be doing with [his] life." Relying on defendant's demeanor and statements in court, the trial judge declared he had a doubt as to whether defendant was competent to stand trial, suspended criminal proceedings, and appointed Dr. Tumu to evaluate defendant and prepare a report

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[8] Defendant also asserted he "sp[oke] to [his] psychiatrist every[ ]day," and when the trial court asked for the name of the psychiatrist, defendant said, "His name is Brandon Ivan Colbert, Jr. His name is that. That's who I speak to."

addressing whether he was competent to stand trial and, if so, competent to represent himself.[9]

Dr. Tumu's May 26, 2017, report concluded defendant was not competent to stand trial. Dr. Tumu acknowledged he previously found defendant competent in October 2016, in connection with the aforementioned separate criminal case, and "did not [then] notice the presence of symptoms that would point to a psychotic disorder." But Dr. Tumu stated he had been provided more information about defendant's history for his May 2017 report, including defendant's hospitalization in Oklahoma and diagnosis with schizophreniform disorder, and Dr. Tumu found based on all the information that defendant suffered from schizophrenia that may have been initiated or exacerbated by defendant's use of K-2, a form of synthetic marijuana. Dr. Tumu did believe defendant was knowledgeable about courtroom personnel and procedure, the charges against him, and the possible penalty, but he based his determination of incompetency on his conclusion that defendant did not have the present ability to rationally assist an attorney defending him. Dr. Tumu stated, however, that treatment of defendant with mood stabilizing or antipsychotic medication was "likely to make [defendant] competent to stand trial."

At a hearing to consider Dr. Tumu's report and make a competency finding, the trial court (with defendant having waived a jury determination) found defendant "not presently mentally competent to stand trial." The court ordered criminal proceedings would remain suspended and committed defendant

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[9] The court ensured defendant would be represented by counsel during the competency-related proceedings.

to a state hospital with an order authorizing involuntary administration of psychotic medication.

Defendant was admitted to Patton State Hospital on July 17, 2017, and three days later, hospital personnel prepared a report finding him competent. The report indicated defendant was "'hostile and uncooperative'" when first evaluated and assaulted two hospital staff members the day after he was admitted, stabbing one repeatedly in the abdomen with a pencil. Hospital staff kept defendant in restraints thereafter and concluded from observations that defendant was "organized, rational and articulate" and his behavior was "not psychotic." The hospital report noted defendant was "not presenting with any of the symptoms Dr. Tumu believed interfered with his ability to proceed with [defendant's] case" and in fact "his behavior [was] quite the opposite and . . . presents as knowledgeable, insightful about his case, and rational." The hospital report further recommended that if defendant's presentation changed drastically when returned to court or otherwise evaluated for competency, "his behavior should then be considered volitional and a diagnosis of malingering considered."

After defendant was discharged from Patton State Hospital, the trial court ordered Dr. Tumu to prepare a further report addressing both whether defendant was competent to stand trial and whether he was competent to represent himself at trial. Dr. Tumu completed the report on October 3, 2017, and found defendant competent in both respects.

Dr. Tumu noted his competency conclusion was based on a review of records, including the Patton State Hospital report and an interview with defendant in the jail facility where he was housed. During that interview, defendant told Dr. Tumu he

knew he was facing "the 'death penalty or life sentence without parole'" but was not stressed because he was "'not guilty.'"[10] Defendant also told Dr. Tumu he felt more comfortable representing himself because he believed he could do a better job than "'someone I don't know'" (and, to that end, had been doing, as reported by Dr. Tumu, "significant amounts of research about legal material").

Dr. Tumu persisted in his diagnosis of schizophrenia and cannabis use disorder and disagreed with the Patton State Hospital report's suggestion that defendant's in-court behavior could be an intentional effort to avoid the consequences of the charges he was facing. But Dr. Tumu now believed defendant was competent to stand trial in light of defendant's "presentation" at Patton State Hospital and additional statements defendant made during the interview with Dr. Tumu in the jail facility (e.g., that defendant would ask for standby counsel to take over if he believed he needed help). Dr. Tumu also specifically found defendant was competent to represent himself at trial, determining defendant "did not exhibit symptoms of a mental illness that are currently impairing his decision to intelligently waive counsel." As Dr. Tumu elaborated: "[E]ven though . . . defendant lacked some basic legal knowledge, he is still competent to represent himself. In other words, just

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[10] By this time, i.e., October 2017, the Los Angeles County District Attorney's Special Circumstance Committee had determined not to seek the death penalty against defendant. But that determination had not been finalized, in the prosecution's view, because it required defendant's signature on certain paperwork and the prosecution had not presented the paperwork to defendant while competency proceedings were ongoing.

because . . . defendant shows poor judgment by electing to represent himself (if in fact he chooses to do so) does not equate to a psychiatric illness. [Defendant] produced logical, rational reasons for wanting to represent himself, other than his assertion that he can simply read law materials and then have the ability to represent himself (as mentioned above, although this is poor judgment on his part, it is not based on psychiatric symptomology)."

At a hearing to consider defendant's competence, both sides waived a jury determination of competence and submitted the issue for the court's decision on the psychiatric reports without argument. The court found defendant competent and announced it was reinstating the criminal proceedings. Defendant's attorney then announced defendant again wanted to invoke his right to self-representation.

The court conducted a colloquy with defendant, including having defendant re-read the *Faretta* waiver form he previously completed, extensively warning defendant of the disadvantages of self-representation, and reading into the record portions of Dr. Tumu's report bearing on defendant's competence to represent himself. At the conclusion of the colloquy, defendant reaffirmed he wanted to discharge his lawyer and represent himself. The court granted defendant's self-representation request, finding it was properly made "based on the totality of the circumstances, [the court's] conversation with him, the report from Dr. Tumu," and applicable precedent.

Two months later, the trial court held a hearing in which it learned defendant had been placed in high-observation housing (HOH) because he refused to eat jail food (preferring only commissary snacks) and had lost a substantial amount of

weight.[11] Defendant complained he was not allowed self-representation privileges in HOH and couldn't get access "to [his] work, to [his] pencils, to the things [he was] supposed to have." The trial court informed defendant he was required to follow all the rules and regulations of the Sheriff's Department, and that if he did not, the court could revoke his self-represented status.

The trial court subsequently held a hearing to evaluate the propriety of the procedures by which defendant's self-representation privileges were restricted. After hearing pertinent testimony, the trial court concluded the Sheriff's Department's actions in limiting some of defendant's self-representation privileges were justified, including by defendant's disciplinary problems in custody. When questioned by the court and re-advised of his right to appointed counsel, defendant affirmed he wanted to continue representing himself, notwithstanding the constraints on his self-representation privileges, and defendant said he would be ready for trial on the date set.

2. Trial

The morning jury selection was to begin, standby counsel brought civilian clothing for defendant but he declined to wear it. When asked if he wished to continue representing himself, defendant replied he did. Just prior to voir dire, the trial court

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[11] Inmates assigned to HOH housing, some of whom were at risk of committing suicide, were frequently seen by prison psychologists. Defendant denied being suicidal, but he said he did not want to eat "county food" and was "more comfortable feeding [himself] with what [he] can buy for [himself]."

provided a jury management information system sheet to the prosecution and defendant. Defendant reviewed the sheet and asked the trial court to explain what certain notations meant. The prosecution noted for the record that defendant was evaluating the sheet and asking relevant questions.

Defendant participated in opening statements, both by objecting once during the prosecution's opening statement and by delivering his own. In his opening statement, defendant maintained he was innocent and that the evidence presented against him had been falsified or tampered with. He projected exhibits for the jury and stated, among other things, that "Hollywood-type happenings" had occurred and the prosecution had tried to force him to wrongfully admit the charges and waive his right to trial.

Two of the law enforcement officers who testified during the prosecution's case at trial, Detectives Hubbard and Vargas, narrated aspects of the aforementioned video surveillance footage that was admitted in evidence and shown to the jury. They identified the sources of the video footage, explained which direction and on which streets the murderer traversed before and after the murders, clarified the time stamps on certain videos, described certain of the murderer's actions they saw in viewing the video footage, and identified defendant as the man of interest depicted.

Defendant made various objections during the prosecution's case-in-chief, some of which were sustained. Shortly after opening statements, he objected that evidence related to the theft of Trivas's vehicle was inadmissible or irrelevant. Later, he objected to the prosecutor and Detective Hubbard referring to the individual depicted in the videos as "the defendant" rather than

the "suspect" (an objection the court then sustained). And he objected to the introduction of audio/video evidence he believed he had not seen prior to trial (which was overruled based on the prosecution's representation it was provided in discovery).

Defendant also cross-examined a number of witnesses, albeit briefly. Defendant asked Luis questions regarding his testimony and prior statements he made to the police. He asked the Greyhound employee if the bus ticket presented as evidence could have been fabricated. He asked the forensic specialist questions regarding the DNA evidence. He asked one law enforcement witness whether videos could be modified. He asked the testifying criminalist if the DNA evidence could have been falsified. He asked the doctor who performed the autopsy on Carina questions regarding the position of the corpse in photos. He also asked multiple other witnesses if they had ever falsified or tampered with evidence.

Defendant put on a defense case by testifying on his own behalf. Defendant briefly described his background, explained his reasons for representing himself ("I could defend myself better than someone that just really is getting paid to defend me and really wouldn't care about the verdict"), and denied being either the shooter or the suspect in the video. Much of the remainder of defendant's testimony on direct examination (given in narrative fashion) consisted of argument, not factual assertions. On cross-examination, defendant admitted he engaged in target practice with his pump shotgun, using 12-gauge shotgun shells. He admitted to coming to Los Angeles from Tulsa on the Greyhound bus, admitted his cell phone number was the same number used to obtain the cell phone location data, and admitted that a DNA sample had been taken

from him. He denied the shirt with the number "99" on the back, which was among his booked property seized pursuant to the search warrant, was his shirt.

With the presentation of evidence complete, defendant participated in the discussion of jury instructions. Though he did not propose any substantive revisions, he responded to questions regarding the acceptability of instructions and asked at least one clarifying question.

Defendant also presented a closing argument in which he argued he was innocent of the charges against him, the evidence presented had been falsified and/or tampered with, and there was no substantial evidence to support his conviction. He argued the Greyhound ticket was falsified or tampered with because it reflected a medical or military discount and he qualified for neither. He claimed he was not the person depicted in the video evidence—allowing that the person shown "does have some likenesses of me," but asserting the septum of his nose was different and he had distinguishing marks on his face the person shown in the video did not. He argued the DNA evidence was planted or falsified, the cell phone evidence was similarly falsified or modified, the video quality was poor and did not accurately depict the suspect, and the video could have been modified. He also argued "Hollywood-type happenings" had occurred. Specifically, he argued the photograph of Carina's corpse with her arm over her face was "not possible" because "in the normal sense," her arm would not be "holding itself up because the nervous system dies." He also claimed Luis's decision to stay behind at the car while J.A. and Carina walked forward and Luis's not being hit by a shotgun shell as "Hollywood-type happenings." Defendant additionally argued Luis had not been

able to provide a good description of the suspect and there was no evidence defendant had a shotgun when he came to California.

4. Verdict and sentencing

The jury found defendant guilty on all counts. It further found true the allegations that the murders of Carina and J.A. were murder in the first degree; that the murders involved the special circumstances of lying in wait and commission of multiple murders; and, as to each count, that defendant personally and intentionally discharged a firearm proximately causing great bodily injury and death to a victim.

At sentencing, the trial court heard victim impact statements and argument from the prosecution. Defendant declined to make any substantive statements on his own behalf. In imposing sentence, the court stated it was "fully aware of all of its discretionary powers and . . . is forever mindful of those powers and those powers are always in the court's mind." On count one (the murder of Carina), the court sentenced defendant to life without parole plus a consecutive 25 years to life sentence for the section 12022.53, subdivision (d) firearm use allegation. On count two (the murder of J.A.), the trial court imposed the identical sentence, to run consecutive to the sentence imposed on count one. On count three, the court sentenced defendant to life in prison plus a consecutive 25 years to life sentence for the firearm enhancement, running the sentence on that count consecutive to the sentence on the other two counts. In remarking on the sentence imposed, the court addressed defendant directly and said: "You went hunting in this beautiful city of Long Beach, like a predator. You acted—you behaved and you achieved your goal as a real urban terrorist. . . . You went

hunting . . . looking for . . . easy prey, and you found them. You went on a killing spree and you encountered the most innocent of victims that you could find. [¶] . . . [¶] The court does not have enough legal or simple words to explain the gravity and the depravity of this case."

As to sentencing-related fines and fees, the court imposed a $10,000 restitution fine as to count one (noting it believed that was the maximum fine it could impose), a $10,000 fine as to count two, and a $7,500 fine as to count three. The court noted a parole restitution fine was unnecessary under the circumstances.[12] The court also ordered victim restitution in the amount of $19,948.50, plus interest, to be paid to the California Victim Compensation Board.

II. DISCUSSION

Minor aspects of the fines and restitution that were made part of the judgment require correction, see *post*, but the remainder of defendant's appellate contentions are meritless. Defendant's claim that the trial court abused its discretion by not revoking self-representation fails in light of the record evidence establishing defendant was capable of carrying out the basic tasks necessary to present a defense—including Dr. Tumu's expert opinion and the transcripts of the trial (and pretrial) proceedings themselves. Defendant's contention that the trial court erred by permitting Detectives Hubbard and Vargas to

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[12] The sentencing minute order and abstract of judgment reflect the imposition of a single $10,000 restitution fine pursuant to section 1202.4, subdivision (b), and a $10,000 parole revocation fine pursuant to section 1202.45.

narrate some of the video footage is forfeited by the absence of a contemporaneous objection (and, of course, there can be no fallback claim that the failure to object was attributable to ineffective assistance of counsel (*People v. Espinoza* (2016) 1 Cal.5th 61, 75)). Defendant's argument that the matter should be remanded to ensure the trial court was aware of its discretion to strike a section 12022.53 firearm use enhancement is unavailing because the statutory amendment conferring such discretion took effect before sentencing and defendant has not overcome the presumption that the trial court was aware of and followed applicable law. And defendant's claim pursuant to *People v. Dueñas* (2019) 30 Cal.App.5th 1157 (*Dueñas*) is forfeited by the absence of a contemporaneous objection in the trial court.

A. The Trial Court Did Not Abuse Its Discretion by Permitting Defendant to Continue Representing Himself

Pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, a criminal defendant has a "'constitutional right to proceed *without* counsel when' [the] defendant 'voluntarily and intelligently elects to do so.' [Citation.]" (*Indiana v. Edwards* (2008) 554 U.S. 164, 170 (*Edwards*); see also *Faretta*, *supra*, 422 U.S. at pp. 818-832.) The "autonomy and dignity interests" that underlie this right are not defeated by "the fact or likelihood that an unskilled, self-represented defendant will perform poorly in conducting his or her own defense . . . ." (*People v. Mickel* (2016) 2 Cal.5th 181, 206 (*Mickel*).)

A self-represented defendant need not meet the standards of an attorney or even be capable of conducting an "effective

defense." (*Mickel*, *supra*, 2 Cal.5th at p. 206.) Indeed, a defendant's right to control his defense includes the right to decide to present no defense, or a defense that has little or no chance of success. (*Id.* at p. 209.) "[R]ecognizing a criminal defendant's right to self-representation may result in ""detriment to the defendant, if not outright unfairness."" [Citation.] But that is a cost that we allow defendants the choice of paying, if they can do so knowingly and voluntarily." (*Id.* at p. 206.)

The right of self-representation, however, is not absolute. (*Mickel*, *supra*, 2 Cal.5th at p. 206; *Edwards*, *supra*, 554 U.S. at p. 171.) Most pertinent here, state courts have discretion to deny self-representation to what are sometimes called "gray-area defendants"—those who fall in the "gray area" between being competent to stand trial if represented by counsel and yet "suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves." (*Edwards*, *supra*, at pp. 172, 174, 178; see also *People v. Johnson* (2012) 53 Cal.4th 519, 528 [confirming trial courts may deny self-representation where *Edwards* permits such a denial] (*Johnson*).)

Competence to represent oneself at trial is defined as "the ability 'to carry out the basic tasks needed to present [one's] own defense without the help of counsel."" (*Johnson*, *supra*, 53 Cal.4th at p. 530.) Both the United States Supreme Court and our Supreme Court have declined to adopt a more specific competence standard for a defendant acting as his or her own attorney. (*Ibid.*) The high court has, however, noted the basic tasks needed to present a defense may include "organization of defense, making motions, arguing points of law, participating in voir dire, questioning witnesses, and addressing the court and jury." (*Edwards*, *supra*, 554 U.S. at p. 176, italics omitted.)

Defendant does not argue the trial court erred in concluding he was competent to stand trial. Nor does he argue the trial court violated his constitutional rights by approving a waiver of counsel that was not knowing and intelligent.[13] Rather, defendant faults the trial court for "fail[ing] to exercise its discretion to revoke [defendant's] self-representation when it became apparent that [defendant] was mentally unable to conduct a defense." Defendant never identifies the point at which this supposedly became apparent—making the argument an unhelpful moving target—but he discusses both the pre-trial competency proceedings and defendant's performance during trial. We shall therefore consider both in our analysis.

The parties initially disagree over the proper standard that should govern a determination of whether the trial court abused its discretion by not terminating defendant's self-represented status. Defendant argues we must apply the standard our Supreme Court set forth in *Johnson* to guide trial courts

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[13] In the course of asserting he suffered from, as *Edwards* requires, a severe mental illness, defendant appears to make a passing argument that Dr. Tumu's conclusion defendant was competent to represent himself was flawed because, defendant says, Dr. Tumu was under the mistaken impression defendant faced the death penalty when the prosecution had "filed" a letter declining to seek the death penalty five months before Dr. Tumu's interview with defendant. The argument is insufficiently presented (if presented at all) and relies on a faulty premise. The District Attorney's letter stating it would not seek the death penalty was dated May 2017, but the prosecution represented that determination had not been "formalized" even as of October 2017 because the prosecution at that time believed defendant still needed to sign some paperwork.

"considering exercising their discretion to *deny* self-representation" (emphasis ours) and analyze "whether the defendant suffers from a severe mental illness to the point where he or she cannot carry out the basic tasks needed to present the defense without the help of counsel." (*Johnson*, *supra*, 53 Cal.4th at p. 530.) The Attorney General, on the other hand, argues that because defendant was found competent to stand trial and the trial court *granted* his request for self-representation, we can conclude the trial court did not abuse its discretion without applying the *Johnson* standard at all. (See generally *People v. Miranda* (2015) 236 Cal.App.4th 978, 988-989 ["Although *Edwards* and *Johnson* expressly grant trial courts the discretion to deny self-representation under certain circumstances, those courts did not address when, or even whether, trial courts may revoke that right after it has been granted. Assuming that a defendant has a 'right' to have the court revoke his [self-represented] status if the court becomes aware of defendant's serious mental disability, we therefore have no guidance as to the appropriate standard of review"].) We assume for argument's sake the more defendant-favorable *Johnson* standard applies and conclude the trial court did not abuse its discretion under that standard.

It is clear from the record that Dr. Tumu diagnosed defendant with at least one mental illness—schizophrenia. However, "[m]ental illness itself is not a unitary concept. It varies in degree. It can vary over time. It interferes with an individual's functioning at different times in different ways." (*Edwards*, *supra*, 554 U.S. at 175.) The pertinent question (as we have framed it) is therefore whether defendant "suffer[ed] from a severe mental illness to the point where he [could not] carry out

the basic tasks needed to present the defense without the help of counsel." (*Johnson*, *supra*, 53 Cal.4th at p. 530.)

The unrebutted expert opinion evidence in the record is to the contrary. That evidence chiefly comes from Dr. Tumu,[14] who addressed the specific question of whether defendant was competent to represent himself, notwithstanding Dr. Tumu's schizophrenia and cannabis use disorder diagnoses, and opined defendant was competent to do so. As to the schizophrenia itself, Dr. Tumu believed defendant suffered from the disorder but he did not conclude the effects were particularly severe; rather, the doctor characterized defendant's psychotic symptoms as "subtle" and did not notice the presence of psychotic symptoms when interviewing and observing defendant. More to the point,

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[14] There is also evidence in the record from the mental health professionals at Patton State Hospital that bears on the question. Although hospital personnel did not specifically consider whether defendant was competent to represent himself at trial, the author of the hospital's report did relate, among other things, the following observations: "When asked about possible evidence [defendant] stated he did not wish to share it with this writer but that he had seen the 'discovery' and knew what he was facing. [Defendant] was able to have the above conversation in a rational, organized and calm manner. He was able to articulate his thoughts without difficulty and there were no psychiatric symptoms interfering with his ability to discuss his case and/or any information related to the court processes or procedures." Insofar as the hospital mental health professionals found defendant was not suffering from any mental illness or exaggerating possible symptoms—and possibly malingering—that would, of course, undercut any claim that deficiencies in defendant's performance at trial were attributable to severe mental illness.

regarding the effects of the diagnosed mental disorders on defendant's competence to represent himself, Dr. Tumu found defendant had deficiencies in his legal knowledge but reported defendant was "stud[ying] the law aggressively while he has been incarcerated and feels comfortable enough to represent himself," in part because defendant believed "he . . . knows more about his case and where he was at the time of the alleged murders . . . ." Dr. Tumu concluded that "even though . . . defendant lacked some basic legal knowledge, he is still competent to represent himself."

The record of trial substantiates Dr. Tumu's opinion and demonstrates defendant's schizophrenia (as diagnosed by Dr. Tumu) did not prevent him from carrying out the basic tasks needed to present a defense. To the contrary, defendant participated to varying but adequate degrees (for purposes of a competency analysis) in *all* of the trial proceedings. Defendant participated in voir dire and appears to have been engaged in the process. He voiced an objection during the prosecution's opening statement and presented his own, stating he was innocent and the evidence against him had been falsified. Throughout the course of trial, defendant objected to evidence and testimony both in and out of the presence of the jury. He cross-examined many of the prosecution's witnesses, albeit briefly, and his questions were organized around a consistent theme: that evidence had been falsified or tampered with. Defendant also presented some evidence via his own testimony, participated in the discussion of jury instructions, and presented a closing argument. During that closing argument, defendant argued he was innocent, the evidence presented had been falsified or tampered with, and there was no substantial evidence to support his conviction.

Despite the transcripts of trial that show defendant was in fact able carry out the basic tasks involved in presenting a defense, defendant argues we should reverse his convictions because he was a very poor advocate—characterizing his defense as "less than nonexistent" and "completely delusional." He focuses on his statements that the State of California was a "programmed machine" tampering with and falsifying evidence, his repeated references to "Hollywood[-]type of happenings," and an asserted misunderstanding of the District Attorney's letter stating the People were not seeking the death penalty. None of this is persuasive. Defendant's mischaracterization of the District Attorney's letter reflects he did not understand the import of the letter he received. This demonstrates at most a lack of legal training, not an inability to perform basic defense tasks. Defendant consistently advanced the argument that he was not the person shown in the surveillance video footage and corroborating evidence had been falsified. That is a coherent defense, albeit one unlikely to succeed. But an ineffective defense is not a basis to revoke a defendant's choice to represent himself. (*People v. Daniels* (2017) 3 Cal.5th 961, 984-985; *Mickel*, *supra*, 2 Cal.5th at p. 209; see also *Johnson*, *supra*, 53 Cal.4th at p. 531 ["Trial courts must apply [the *Edwards*] standard cautiously. . . . A court may not deny self-representation merely because it believed the matter could be tried more efficiently, or even more fairly, with attorneys on both sides"].) Indeed, with the overwhelming evidence against defendant, we are skeptical that there was room for a trained attorney to have done meaningfully better under the circumstances.

Defendant additionally asserts his refusal to "eat and drink to the point of being considered suicidal, his refusal to leave [his]

jail cell, [and] his refusal to shower" are further reason to believe he was incompetent to represent himself. We agree these all might be proxies for whether defendant actually suffered from a mental illness, which is a proposition in some doubt based on the expert psychiatric evidence in the record. But the question is not whether defendant suffered from a mental illness but whether it was a severe mental illness that impacted his performance "to the point where he [could not] carry out the basic tasks needed to present the defense without the help of counsel." (*Johnson*, *supra*, 53 Cal.4th at p. 530.) We see nothing that establishes, or even suggests, that defendant's reluctance to bathe, his preference for commissary snacks and bottled water, or the few instances during which he did not want to come to court had such an impact.

Defendant also relies on comparisons to *People v. Shiga* (2016) 6 Cal.App.5th 22 (*Shiga*), all of which are unavailing in light of the features of the record we have highlighted thus far. *Shiga* holds the trial court there abused its discretion by granting the defendant pro per status where "it [was] apparent from the record that the trial court was unaware that it had the discretion both to conduct an inquiry regarding whether defendant was mentally incapable of representing himself and, if necessary, to deny [his request to represent himself] on that ground." (*Id.* at p. 40.) The *Shiga* case is not on point here because the error asserted is the trial court's purported failure to revoke a defendant's self-represented status, not a challenge to the decision to approve a waiver of counsel in the first instance. But even taking *Shiga* on its own terms, the trial court here not only recognized it had discretion to terminate self-representation but ordered an evaluation of defendant's competency to stand trial

and to represent himself. The trial court did not proceed as if it believed defendant had an absolute right to defend himself, regardless of his competency to do so.[15] *Shiga* does not establish there was an abuse of discretion here.

B. Testimony Regarding Surveillance Videos

Defendant asserts the trial court erred by allowing Detectives Hubbard and Vargas to, as defendant puts it, "narrat[e] the video clips, repeatedly telling the jurors what the clips 'showed' and what was 'depicted' on them." Defendant concedes no contemporaneous objection was made during the presentation of the video footage except insofar as defendant objected to the detectives describing the person of interest in the footage as "the defendant" rather than "the suspect." We provide additional background and explain why the contention is forfeited and undeserving of reversal regardless.

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[15] In approving defendant's *Faretta* waiver, the trial court remarked it "ha[d] no option at this point but to allow [defendant] to represent himself." The full context of the remark, however, includes the extensive *Faretta* colloquies, a review of pertinent case law, and the competency-related reports and proceedings, as the court itself noted when making the remark. Thus, far from being evidence that the court believed it had no discretion to deny self-representation, the remark is evidence that the court pursued avenues that might allow it to exercise that discretion but ultimately found the law would not permit it under the circumstances.

1. Detective Hubbard's testimony

When Detective Hubbard testified as a witness for the prosecution, his testimony focused on the footage of the shooting itself, footage of the defendant at the 5th Street Metro station, and footage of the defendant on a Metro train car.

Detective Hubbard first testified specifically about videos captured by two cameras at a residential loft on the corner diagonal from the murder site. Prior to playing the videos, the prosecution presented Detective Hubbard with a series of still photographs made from the videos and asked Detective Hubbard to explain them or "tell us what" the photos "show[ ]." He responded by identifying the streets and intersection depicted in the photos, noting when he could see the murder suspect or victims in the video, and describing the directions in which the individuals in the photos were moving.

After the prosecution had questioned Detective Hubbard about the first set of still photographs, it published the photos to the jury in order, asking Detective Hubbard to "describe for the jurors what that shows." Detective Hubbard did so, with statements summarizing what locations the photos depict, the actions of the figures in the photos, and the marks he made on the exhibits. For example, in describing one photo, Detective Hubbard stated it showed "the suspect on the Northeast corner of 9th and Locust as well. And I circled where the victims or mom and daughter were exiting their vehicle." Regarding another, he explained one figure in the photo "was the suspect as well. And I believe in that one from what I can see with my view it is – he may be advancing or – my eyesight at this point doesn't show me. I believe that is suspect and someone standing, either mom or daughter."

The prosecution completed a similar process with photos from another camera at the residential loft. Detective Hubbard's testimony similarly focused on identifying the intersection, the individuals visible in the still photographs, and their actions. In commenting on the photos, the detective testified the suspect "had what looked like a limp" in the videos.

The prosecution then played video clips and asked Detective Hubbard to confirm that certain aspects he had described in the still photographs were reflected in the video. For example, the prosecution asked Detective Hubbard to confirm which camera had captured the video, whether the video depicted the suspect walking across the street, whether the suspect was walking with an unusual gait, whether his gait was consistent with someone having a shotgun in their pant leg, and whether the video captured the murders Detective Hubbard had testified to earlier. As to the Metro video surveillance footage in particular, Detective Hubbard testified he had formed an opinion that the person in the video was defendant.

2. Detective Vargas's testimony

Detective Vargas testified regarding surveillance footage that captured the hours before and after the shooting. Detective Vargas explained he and other detectives collected the surveillance videos from the area near the crime scene. He had reviewed the video, created a timeline of the events that occurred before and after the murders, and created a chronological set of video clips showing the suspect before and after the murders.

Detective Vargas was able to identify the suspect by watching all the videos. He started with the video of the murders and paid attention to the suspect's physical appearance, clothing,

gait, and how he walked to and from the crime scene. He reviewed other videos of the suspect fleeing the scene, including video that gave him a closer look at the suspect's face, demonstrating the suspect was a bald black male with a beard. He then reviewed a video from the USA Gas Station and "knew we had our guy." Detective Vargas identified the suspect as defendant by looking at the booking photo and reviewing an interview conducted by Detective Hubbard and another detective. He did not identify any contacts with defendant other than seeing defendant in court once before.

Detective Vargas also testified regarding a series of videos that had been organized and compiled chronologically.[16] He identified the location depicted in each video, often naming the business from which the video had been obtained. He described the suspect's actions in the videos, sometimes mentioning evidence that would appear in later videos. (For example, when describing the video that depicts defendant first entering the parking lot, he stated, "[t]he suspect is walking Northbound Palmer Court, which is that alley, rear of 701 Long Beach Boulevard. And he is pulling a roller suitcase, which I will later find out there's a duffel bag attached to that roller suitcase. And he will proceed to that staircase, up ahead of him.") Detective

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[16] As the prosecution began playing the videos, defendant objected, noting his name appeared instead of the "suspect" in one of the videos. The prosecution removed it. Detective Vargas began testifying regarding the content of the videos. In doing so, he referred to the individual in the video as the "defendant." Defendant objected to the use of "the defendant" rather than "the suspect." The court sustained the objection, noting "[w]e are not there yet," and struck the answer.

Vargas sometimes testified about the timeframe certain videos captured, and corrected inaccurate timestamps visible on the videos.

When the prosecution played the surveillance video from the USA Gas Station, Detective Vargas focused on details related to the shotgun protruding from the suitcase and the suspect's attire. He testified a shotgun was visible when the suspect first enters the mini-mart, stated "it looks like he is recovering the shotgun" once inside, and noted "[h]e will take some time to secure the item and cover it up." When the prosecution played another USA Gas Station video that had recorded audio as well, the following colloquy occurred:

> "The Court: Describe what's taking place.
>
> The Witness: I couldn't understand you.
>
> The Court: Never mind.
>
> The Witness: Describe? I'm sorry, Your Honor. Again, the suspect is walking away from the Travel King Motel. He walked across Martin Luther King Boulevard into the USA Gas Station parking lot and making his way into the mini-mart again. Sorry, Your Honor."

After the prosecution presented this video, the prosecution sought to revisit defendant's objection to the prosecution or witnesses referring to the suspect in the videos as "the defendant" in testimony. The prosecution argued the objection was improper because Detective Vargas had identified defendant as the suspect in the gas station video. It noted "the jury can do what they want with that, but once he identifies the defendant, we can refer to him as the defendant." The court agreed.

3. Defendant's objection to the detectives' testimony narrating aspects of the videos is forfeited

A judgment may not be reversed due to the erroneous admission of evidence unless "'[t]here appears of record an objection to . . . the evidence that was timely made and so stated as to make clear the specific ground of the objection . . . .' [Citation.]" (*People v. Holt* (1997) 15 Cal.4th 619, 666, italics omitted; accord, *People v. Gomez* (2018) 6 Cal.5th 243, 286.) The argument asserted on appeal, namely that the detectives' testimony was inadmissible because it was not helpful to the jurors, who were equally able to evaluate the video footage and still images, was accordingly forfeited. (Evid. Code, § 353, subd. (a) [no reversal based on erroneously admitted evidence unless the defendant made a timely objection that "make[s] clear the specific ground of the objection or motion"].)

Defendant nonetheless maintains the issue is properly before the court because, he says, any objection would have been futile, the issue is a pure question of law on undisputed facts, and the trial court had an affirmative duty to act as a vigilant gatekeeper and ensure any expert testimony rests on a reliable foundation. Each point is unpersuasive.

First, we do not infer an objection would have been futile because the trial court did, at one point during Detective Vargas's testimony, ask him to describe what was taking place. Even assuming the court's subsequent "never mind" statement was not a retraction of its request, we cannot be certain from the record we have what was "happening" at the time and what might need legitimately need clarification from the testifying witness. Furthermore, the trial court was solicitous of defendant's other objections concerning the video and there is no reason to believe

the court would have refused to genuinely consider proper objections made on other grounds. Second, we do not believe the issue is a pure question of law and, indeed, if defendant were correct on that score, it would entirely undermine the statutory requirement for evidentiary objections. And third, defendant's gatekeeper argument obviously would not apply to lay opinion testimony and defendant makes no effort to identify what of the testimony he challenges was purportedly offered only as expert testimony.

4. The detectives' narration testimony was harmless, in any event, given the overwhelming evidence of guilt

"It is . . . well settled that the erroneous admission or exclusion of evidence does not require reversal except where the error or errors caused a miscarriage of justice. [Citation.] '[A] "miscarriage of justice" should be declared only when the court, "after an examination of the entire cause, including the evidence," is of the "opinion" that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.' [Citations.]" (*People v. Richardson* (2008) 43 Cal.4th 959, 1001 [citing harmless error standard announced in *People v. Watson* (1956) 46 Cal.2d 818, 836 (*Watson*)].)

Defendant has not come close to meeting the *Watson* standard with respect to his asserted video-narration error. The video footage the detectives used to identify defendant was presented in pertinent part to the jury. Though not all of the footage was clear, our review of the videos demonstrates the jurors could have tracked the shooter through the videos based on

his gait, the suitcase he was pulling in many of the videos, and his clothing. Having tracked the shooter to later videos, namely those in the USA Gas Station and the Metro car, the jurors could have identified defendant from the footage by comparing the videos to his booking photo. That, coupled with a police officer's testimony that defendant looked like his booking photo on the day of his arrest in August 2016 and the recovery of the "99" shirt that could be seen in the videos, gave the jury a strong basis to identify defendant as the shooter regardless of any narration of the video footage.[17]

Even apart from the video surveillance footage, there was compelling evidence of guilt. Police located a user manual for a shotgun in defendant's home in Oklahoma. DNA collected from one of the shotgun shells recovered at the scene of the shootings matched defendant's DNA. Luis provided a description of the shooter that, while quite general, was consistent with defendant being the culprit. Cell phone records for defendant's phone number indicated he was near the murder scene around the time of the murders. And defendant made incriminating admissions regarding some of this corroborative evidence during his own trial testimony.

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[17] Additionally, the jury saw and heard a version of the USA Gas Station video that included audio of the defendant's conversation with the cashier. As the jury heard defendant's voice throughout the trial, it could also have compared his voice to the voice on the video.

C. Senate Bill 620

Senate Bill 620, which took effect on January 1, 2018, amended Penal Code section 12022.53 to give trial courts discretion, in the interest of justice, to strike a firearm enhancement finding made under the statute. (§ 12022.53, subd. (h), as amended by Stats. 2017, ch. 682, § 2 ["The court may, in the interest of justice pursuant to Section 1385 and at the time of sentencing, strike or dismiss an enhancement otherwise required to be imposed by this section"].) Defendant was sentenced on February 2, 2018, a month *after* the amendments to section 12022.53 took effect.

"[A] trial court is presumed to have been aware of and followed the applicable law." (*People v. Mosley* (1997) 53 Cal.App.4th 489, 496.) Because section 12022.53, subdivision (h) took effect before defendant was sentenced, we presume the trial court was aware of its discretion to strike or dismiss defendant's firearm enhancements.

Despite this presumption, defendant argues the trial court was "apparently unaware of the newly enacted provision" because it did not specifically refer to its discretion at the sentencing hearing. This argument is meritless. The presumption is not negated by a silent record—indeed, that is the whole point of a presumption. Furthermore, even if a silent record could negate the presumption, the court here was not in fact silent; rather, the court stated at sentencing that it was "fully aware of all of its discretionary powers and . . . forever mindful of those powers. . . ." That is sufficient indication the court was aware of its discretion, and regardless, the trial court's other comments at sentencing and the imposition of consecutive life without parole

sentences—which we affirm—leave no doubt a Senate Bill 620 remand here would be pointless.

D. Fines

Defendant contends, and the Attorney General agrees, the $10,000 parole revocation fine that appears in the sentencing hearing minute order and abstract of judgment must be stricken. That is correct, as the trial court properly did not orally impose that fine on defendant (*People v. Battle* (2011) 198 Cal.App.4th 50, 63) and the oral pronouncement of sentence controls (*People v. Mitchell* (2001) 26 Cal.4th 181, 185).

The Attorney General also argues the minute order and abstract of judgment do not accurately reflect all the restitution fines imposed by the court. At the sentencing hearing, the court imposed a total of $27,500 in restitution fines pursuant to section 1202.4, subdivisions (b) through (e). The abstract of judgment and minute order only reflect a $10,000 restitution fine.

Section 1202.4, subdivision (b) provides, in pertinent part, that a restitution fine must be imposed "[i]n every case where a person is convicted of a crime." As specified by the statute, the maximum applies per case, not per count. (*People v. Sencion* (2012) 211 Cal.App.4th 480, 483.) The trial court thus lacked the authority to impose restitution fines exceeding $10,000. (See, e.g., *People v. Martinez* (2014) 226 Cal.App.4th 1169, 1191, fn. 14; *People v. Blackburn* (1999) 72 Cal.App.4th 1520, 1534.) The oral pronouncement of the restitution fines was accordingly unauthorized, but there is no need for further correction because the minute order and abstract of judgment state the correct amount.

The abstract of judgment does, however, include an additional minor clerical error. Though the trial court's oral pronouncement and the minute order indicate the defendant was ordered to pay $19,948.50 in restitution to the California Victim Compensation Board, the abstract of judgment does not reflect whether the amount is to be paid to victims or to the Restitution Fund. We will order the abstract of judgment corrected in that respect.

Finally, relying on the recent opinion in *Dueñas*, *supra*, 30 Cal.App.5th 1157, defendant argues imposition of the court operations assessments, conviction assessments, and restitution fine were improper because the trial court did not first hold a hearing on his ability to pay. No objection on this ground was raised at the time of sentencing (perhaps because there was discussion on the record that the amounts could be satisfied by prison wages and defendant was aware he would have the rest of his life to make payments). The issue is therefore forfeited. (*People v. Frandsen* (2019) 33 Cal.App.5th 1126, 1153-1155; see also *People v. Aguilar* (2015) 60 Cal.4th 862, 864; *People v. Avila* (2009) 46 Cal.4th 680, 729; *In re Sheena K.* (2007) 40 Cal.4th 875, 880.)

DISPOSITION

The abstract of judgment and associated minute order are ordered corrected to delete any reference to the imposition of a $10,000 parole revocation fine; the abstract of judgment is further ordered corrected to state the $19,948.50 restitution payment is to be made to the California Victim Compensation Board. The clerk of the superior court is to deliver a copy of the corrected abstract of judgment to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BAKER, Acting P. J.

We concur:

MOOR, J.

KIM, J.